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**POVERTY, SOCIO-POLITICAL FACTORS AND DEGRADATION OF THE ENVIRONMENT IN  
SUB-SAHARAN AFRICA: THE NEED FOR A HOLISTIC APPROACH TO THE PROTECTION  
OF THE ENVIRONMENT AND REALISATION OF THE RIGHT TO ENVIRONMENT**

Emeka Polycarp Amechi

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## ARTICLE

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# 1

## INTRODUCTION

The environment is a vital component of Africa's quest to achieve sustainable development. The new partnership for Africa's Development (NEPAD) in its Environmental Initiative recognises that a healthy and productive environment is a prerequisite for NEPAD as it is vital to creating the social and ecological base upon which the partnership can thrive.<sup>1</sup> Prior to NEPAD, African leaders have since the late 1960 recognised the importance of the environment and its resources to their development and have undertaken measures for its protection and conservation as evidenced by the adoption of the African Convention on the Conservation of Nature and Natural Resources (Algiers Convention) in 1968.<sup>2</sup> The Algiers Convention was followed by other regional and sub-regional environmental agreements such as the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa,<sup>3</sup> the Nairobi Convention for the Protection, Management and Development of Marine and Coastal Environment of the Eastern Africa Region,<sup>4</sup> and Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region.<sup>5</sup> The situation is not different at the

national level where a plethora of environmental instruments has been adopted to protect the environment and enhance socio-economic development.<sup>6</sup>

In addition to these environmental instruments, various human rights instruments in Africa have provided for the right to environment. In providing for this right, African nations have recognised that the right so protected must contribute to the promotion of socio-economic development in the region. This is apparent from the provisions of article 24 of the African Charter on Human and Peoples' Rights, which provides '[a]ll peoples shall have the right to a general satisfactory environment favourable to their development'.<sup>7</sup> It should be noted that the Banjul Charter is the foremost regional human rights instrument and has been ratified by virtually every African nation. At the national level, several African nations have followed the example of the Banjul Charter in explicitly tying the right to the promotion of socio-economic development.<sup>8</sup> For example, section 24 of the South African Constitutions not only provides that '[e]veryone – h as the right to an environment that is not harmful to their health or well-being', but also, 'to have the environment protected, for the benefit of present and future generations, through reasonable and other measures that ... secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development'.<sup>9</sup>

However, it appears that these legal instruments as well as institutional frameworks for the protection of the environment have not had the desired effects on the

1 Organisation of African Unity, The New Partnership for Africa's Development (NEPAD), adopted at the 37<sup>th</sup> summit of Organisation of African Unity, 2001 (Hereinafter NEPAD framework document).

2 See African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968, OAU Doc. No. CAB/LEG/24.1.

3 See Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, Bamako, 30 January 1991, 30 *ILM* 775 (1991).

4 See Nairobi Convention for the Protection, Management and Development of Marine and Coastal Environment of the Eastern Africa Region, New York, 1985, available at [http://www.unep.org/NairobiConvention/docs/English\\_Nairobi\\_Convention\\_Text.pdf](http://www.unep.org/NairobiConvention/docs/English_Nairobi_Convention_Text.pdf).

5 See Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, Abidjan, 1981, available at <http://www.opcw.org/chemical-weapons-convention/related-international-agreements/toxic-chemicals-and-the-environment/marine-and-coastal-environment-west-and-central-africa/>.

6 For e.g., see National Environmental Management Act (NEMA), No. 107 of 1998 (South Africa); Environmental Management and Coordination Act (EMCA), No. 8 of 1999 (Kenya); and Federal Environmental Protection Agency (FEPA) Act, Cap F10 LFN 2004 (Nigeria), now superseded by National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, No. 25 of 2007.

7 See African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981, OAU Doc.CAB/LEG/67/3 rev.5, 21 *ILM* 58 (1982) (Hereinafter Banjul Charter).

8 For these constitutional or legal provisions, see the Appendix to Earth Justice, Environmental Rights Report: Human Rights and the Environment 86-108 (Oakland: Earth Justice, 2005) (Hereinafter Earth Justice Report).

9 See Constitution of the Republic of South Africa, Act No. 108 of 1996. See also Environmental Management and Coordination Act (Kenya), note 6 above.

conservation or protection of the environment in sub-Saharan Africa. This is due to the fact that despite the existence of these regulatory frameworks, sub-Saharan Africa's environment is heavily degraded with adverse consequences for both the achievement of sustainable development and realisation of the right to environment. Such degradation is apparent from the findings of various regional and national state of environment (SoE) reports such as the two volumes of the African Environmental Outlook,<sup>10</sup> the 2003 Kenyan SoE,<sup>11</sup> and the 2006 South African SoE.<sup>12</sup> Since the problem of environmental degradation and consequent non-realisation of the right to environment in Africa is not due to the absence of regulatory frameworks, the issue therefore is what is/are the cause(s) of environmental degradation in Africa, and what approach can be adopted to tackle the problem of environmental degradation in order to enhance not only the realisation of the right to environment, but also, the overall achievement of sustainable development in the region?

This article aims to proffer a holistic or integrated approach to tackle the problem of environmental degradation in order to enhance realisation of the right to environment and overall sustainable development in sub-Saharan Africa. It commences with a discussion of the factors responsible for environmental degradation in the region. Such discussion is necessary as any holistic approach towards arresting environmental degradation and enhancing the realisation of the right to environment in sub-Saharan Africa needs to take cognisance of the factors militating against the protection or conservation of the environment in the region. This will be followed by a discussion of the core components of the holistic or integrated approach to be adopted by sub-Saharan African governments in order to enhance the protection of the environment and realisation of the right to environment in the region. Finally, the article is

concluded with some recommendations on how the international community can help sub-Saharan African countries in protecting their environment and enhancing the realisation of the right to environment in the region.

## 2 FACTORS RESPONSIBLE FOR ENVIRONMENTAL DEGRADATION IN SUB-SAHARAN AFRICA

The degraded state of sub-Saharan Africa's environment has been attributable to mostly non-natural or man-made incidents such as *inter alia* climate change, invasive alien species, over-harvesting, deforestation, charcoal production and consumption, pollution, hazardous and untreated wastes, and land cover change.<sup>13</sup> The millennium Ecosystem Assessment (MA) describes these incidents as direct drivers of environmental deterioration.<sup>14</sup> It should be noted that with the exception of climate change that has been attributed to anthropogenic greenhouse gases (GHGs) emission by industrialised countries,<sup>15</sup> most of these environmentally devastating incidents are caused or exacerbated by human and industrial activities within Sub-Saharan Africa. The emergence or occurrence of these incidents or direct drivers is in turn influenced by human acts or omissions that are mostly socio-economic and political in nature.<sup>16</sup> These socio-economic and political issues which are interlinked include:<sup>17</sup>

10 See United Nations Environment Programme, *African Environmental Outlook 2: Our Environment, Our Wealth* (Nairobi: UNEP, 2006) (hereinafter AEO 2) and United Nations Environment Programme *African Environmental Outlook: Past, Present and Future Perspectives* (Nairobi: UNEP, 2002) (hereinafter AEO I).

11 See National Environmental Management Authority (NEMA), State of Environment (SoE) Report for Kenya, 2003 (Nairobi: NEMA, 2003).

12 See Department of Environmental Affairs and Tourism (DEAT), South Africa Environment Outlook: A Report on the State of the Environment (Pretoria: DEAT, 2006).

13 See AEO I, note 10 above, chapter 2; AEO 2, note 10 above, chapter 2 and National Environmental Management Authority, note 11 above at 9-16.

14 World Resource Institute, *Millennium Ecosystem Assessment 2005: Ecosystem & Human Well-Being: Synthesis* 67-70 (Washington, DC: Island Press, 2005) (hereinafter MA General Synthesis) and Don Melnick et al, *Environment and Human Well-Being: A Practical Strategy* (London: Earthscan, 2005).

15 Africa's contribution to global GHG emission is negligible. See AEO 2, note 10 above at 59.

16 See Johan Hattingh and Robin Attfield, 'Ecological Sustainability in a Developing Country such as South Africa: A Philosophical and Ethical Inquiry', 6(2) *The International Journal of Human Rights* 65 86-87 (2002).

17 Note that these socio-economic and political issues may also overlap among the factors. The MA has referred to these factors and issues as indirect drivers. See World Resource Institute, note 14 above at 64-66.



## 2.1 Poverty

Poverty is prevalent in sub-Saharan Africa. This can be seen from the fact that the bottom 25 spots of the United Nations (UN) quality of life index are regularly filled by Sub-Saharan African nations,<sup>18</sup> while Sub-Saharan African nations usually constitute two-third of the 50 nations on the UN list of least developed countries.<sup>19</sup> Poverty as used in this article is multidimensional,<sup>20</sup> and goes beyond lack of income to include as proposed by the United Nations Development Programme (UNDP), 'the denial of opportunities and choices most basic to human development - to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-esteem and the respect of others.'<sup>21</sup> The NEPAD Environmental Action Plan (NEPAD-EAP) has identified poverty as the main cause and consequence of man-made environmental degradation and resource depletion in Africa.<sup>22</sup> Thus, it can be argued that environmental degradation and poverty are inextricably intertwined.<sup>23</sup> The consequence of this linkage is a vicious cycle in which poverty causes the degradation of the environment, and such degradation in turn perpetuates more poverty.<sup>24</sup> As aptly observed by Fabra '...poverty and environmental degradation are often bound together in a mutually reinforcing vicious cycle,

and thus human rights abuses related to poverty can be both cause and effects of environmental problems'.<sup>25</sup>

The effects of poverty in perpetuating environmental degradation and non-realisation of the right to environment can be seen at both public and private levels in sub-Saharan Africa. At the public level, it adversely affects the stringency of environmental regulations in order to attract more investments into sub-Saharan African countries; the amount of public fund spent on environmental protection by these countries; and in extreme cases, encourages States complicity or active participation in the degradation of their environment as evidenced by some sub-Saharan African governments signing agreements with American or European companies to dispose hazardous wastes in their territories.<sup>26</sup> At the private level, it leads to the poor being forced to rely heavily on the ecosystem for their nutritional and energy needs, thereby leading in most cases, to the degradation of the environment.<sup>27</sup> As aptly observed by Johnson, '[t]he very poor were driven to destroy the environment because they had no other possibilities. It was a question of sheer survival. The only hope is to improve their lot dramatically'.<sup>28</sup> The issue of deforestation in Africa exemplifies the effect of income poverty on the environment.<sup>29</sup> Rising demand for fuel wood and charcoal for energy needs has been identified as one of the major causes of deforestation in the region.<sup>30</sup>

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18 See United Nations Development Programme (UNDP), *Human Development Indices: A Statistical Update 2008* 27-28 (New York: UNDP, 2008). List shows that African countries comprise 25 out of 26 countries with low human development.

19 For current list of the Least Developed Countries as on 22 August 2009, see <http://www.unohrrls.org/en/ldc/related/62/>.

20 For a comprehensive treatment of the nature, dimension and manifestation of poverty, see Focus on Global South, *Antipoverty or Anti Poor? The Millennium Development Goals and the Eradication of Extreme Poverty or Hunger*, 2003, available at <http://focusweb.org/pdf/MDG-2003.pdf>.

21 United Nations Development Programme (UNDP), *Human Development Report: Human Development to Eradicate Poverty* 5 (New York: UNDP, 1997). For similar definition, see para 3 of United Nations Administrative Committee on Coordination, *Statement of Commitment for Action to Eradicate Poverty*, UN Doc. E/1998/73 (1998).

22 See New Partnership for Africa's Development (NEPAD), *Action Plan of the Environment Initiative of the New Partnership for Africa's development*, 2003, para 23. (Hereinafter NEPAD-EAP).

23 *Id.*, para 1.

24 *Id.*, para 3. See also World Resource Institute, note 14 above at 62.

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25 Adriana Fabra, *The Intersection of Human Rights and Environmental Issues: A Review of Institutional Development at International Level* (Background Paper prepared for Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva, 14-16 January 2002), available at <http://uchchr.ch/environment/bp3.pdf>.

26 See James Brooke, 'Waste Dumpers Turning to West Africa', *The New York Times*, 17 July 1988, available at <http://www.nytimes.com/1988/07/17/world/waste-dumpers-turning-to-westafrica.html?pagewanted=all>.

27 See AEO 2, note 10 above at 13.

28 Stanley P. Johnson ed., *The Earth Summit: The United Nations Conference on Environment and Development (UNCED)* 145 (London: Graham & Trotman, 1993).

29 Other adverse effect of income poverty on the environment in Africa include atmospheric pollution through burning of unclean fuel, biodiversity loss through the bush meat trade and other forms of overexploitation, and slums. See AEO 2, note 10 above, chapter 2.

30 See AEO 2, note 10 above at 204, 213-214, & 221. See also AEO I, note 10 above at 225 and Rasheed Bisiriyu, *The Connection between Energy, Poverty and Environmental Degradation*, 2004, available at <http://www.gasandoil.com/GOC/news/nta42939.htm>.

Such rising demand is due to the inability of the poor in Africa to access modern and cleaner energy sources caused principally by lack of income.<sup>31</sup> It should be noted that the adverse effects of the rising demand for fuel wood and charcoal for energy purposes is not restricted to deforestation alone, as it has equally led to loss of biodiversity as well as increased atmospheric air pollution in Africa.<sup>32</sup> With regard to the latter, in Kenya for example, charcoal production and consumption are believed to be emitting more GHGs than the industry and transport sectors combined.<sup>33</sup>

The effect of income poverty is not restricted to overexploitation or degradation of the environment as it equally affects demand for better environmental quality by citizens from their governments.<sup>34</sup> This is based on the assumption that at low levels of income, people in poor countries are more likely to be preoccupied with sustenance and achieving their basic needs than to bother with environmental quality. However, the reverse is the case when such countries became high-income economies as such high income would lead to citizens' demand for stricter and better environmental control from their policy makers.<sup>35</sup> Ruttan observed this relationship in his presidential address to the American Agricultural Economics Association in 1971 when he stated:

'In relatively high-income economies, the income elasticity of demand for commodities and services related to sustenance is low and declines as income continues to rise, while the income elasticity of demand for more effective disposal of residuals and for environmental amenities is

high and continues to rise. This is in sharp contrast to the situation in poor countries where the income elasticity of demand is high for sustenance and low for environmental amenities'.<sup>36</sup>

The issue of access to court by litigants exemplifies the relationship between a rise in per capita income and demand for environmental quality. It should be noted that legal remedies constitute one of the means by which environmentally conscious citizens can force their government to adopt more stringent environmental regulations or to strictly apply existing environmental regulations and standards.<sup>37</sup> However, access to legal remedies is dependent on the litigants being able to afford it.<sup>38</sup> This invariably means having the financial wherewithal to hire lawyers and use legal institutions as well as offsetting the opportunity cost generated by being away from income-generating activities in the course of the litigation.<sup>39</sup> Such resources are not available to poor people.<sup>40</sup> The situation is more critical where the

36 Vernon W. Ruttan, 'Technology and the Environment', 53 *American Journal of Agricultural Economics* 707 (1971).

37 For example in India, the court has been used by public-spirited individuals to force the government to strictly enforce environmental law. See Michael Anderson, 'Individual Rights to Environmental Protection in India', in Alan Boyle and Michael Anderson eds., *Human Rights Approaches to Environmental Protection* 211 (Oxford: Oxford University press, 1998). Such potential also exist in South Africa. See also *Government of the Republic of South Africa and others v. Grootboom and others* 2001 (1) SA 46 (CC); *Minister of Health and others v. Treatment Action Campaign and others* No. 2 2002 (5) SA 721; *Earthlife Africa (Cape Town) v. Director-General: Department of Environmental Affairs and Tourism and another* 2005 (3) SA 156 (C) and *Director: Mineral Development, Gauteng Region and Another v. Save the Vaal Environment and Others* 1999 (2) SA 709 (SCA). However, such opportunity is highly restricted in Nigeria. See *Oronto-Douglas v. Shell Petroleum development Corporation and 5 Others* Unreported Suit No. FHC/CS? 573/93. Delivered on 17 February 1997.

38 See Michael Anderson, Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in the LDC, 1999, available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfID-Projectpapers/anderson.pdf>. (Hereinafter Anderson II).

39 *Id.* at 18.

40 See Engobo Emeseh, The Limitation of Law in Promoting Synergy Between Environment and Development Practices in Developing Countries: A Case Study of the Petroleum Industry in Nigeria, available at [http://userpage.fu-berlin.de/ffu/akumwelt/bc2004/download/emeseh\\_fpdf](http://userpage.fu-berlin.de/ffu/akumwelt/bc2004/download/emeseh_fpdf) and World Resources Institute et al., *The Wealth of the Poor - Managing Ecosystems to Fight Poverty* 76 (Washington, DC: World Resources Institute, 2005).

31 *Id.* See also Maureen Cropper and Charles Griffith, 'The Interaction of Population Growth and Environmental Quality' 84(2) *American Economic Peer Review Papers and Proceedings* 250 (1994) and United Nations Environment Programme (UNEP) and International Institute for Sustainable Development (IISD), *Human Well-Being, Poverty & Ecosystem Services: Exploring the Link* 18 (Nairobi: UNEP & IISD, 2004).

32 See AEO 2, note 10 above at 60, 65, 213 & 251.

33 Republic of Kenya, National Energy Policy Draft (Nairobi: Ministry of Energy, 2002) as cited in AEO 2, note 10 above at 65.

34 See David Hunter, James Salzman and Durwood Zaelke (eds), *International Environmental Law & Policy* 2ed, 1128-1129 (2002).

35 *Id.* See also Gene M. Grossman and Alan B. Krueger, 'Economic Growth and Development', 110 *Quarterly Journal of Economics* 353 (1995) and M. Munasinghe, 'Countrywide Polices and Sustainable Development: Are the Linkages Perverse?' *International Yearbook of Environmental and Resource Economics 1998/1999 - A Survey of Current Issues* 33 (1998).



litigation is in the public interest and may not yield any personal gain to the litigants in the form of adequate monetary compensation when successful. The position is more likely to change as their per capita income rises as they can now afford to not only demand better environmental standards from both government and polluting industries, but also, use the instrumentality of the court in such pursuit where necessary.<sup>41</sup> In addition, better income level will help in pursuing the case to its conclusion thereby avoiding a situation whereby the polluters will avoid prosecution by offering gratifications to the poor plaintiffs to withdraw the suit.<sup>42</sup>

## 2.2 Lack of Access to Information and Public Participation

The rights of public access to information and participation in governance decision-making process are essential for empowering poor people as such rights enhance their abilities as well as opportunities to participate in the decisions that affect their well-being and livelihood. Thus, in the absence of these procedural rights, the prospects of achieving sustainable development objectives such as environmental protection and poverty reduction and sustainable development will be adversely affected.<sup>43</sup> This is presently the situation in sub-Saharan Africa where access to information held by public authorities is restrictively regulated under the guise of safeguarding public security and safety. As aptly complained by Longe Ayode of Media Rights Agenda (MRA), a Lagos-based non-governmental organisation (NGO), this veil of secrecy makes it difficult to get information from any

state agency in Nigeria.<sup>44</sup> According to Ayode, 'If you want useful information from a government department, they will not give it to you. They will tell you it is classified information.'<sup>45</sup> It should be noted that the refusal by public authorities to grant access to information in Nigeria is supported by a plethora of laws most notably the Official Secret Act.<sup>46</sup> It is however not only Nigeria that has sought to restrict access to information as most countries in sub-Saharan Africa are equally guilty of this restrictive practice.<sup>47</sup> This has led to a situation where in the whole of sub-Saharan Africa, it is only 'South Africa, which remains the only African country that has passed and implemented an *Access to Information law*. Uganda and Angola have also passed FOI legislation but these have not been brought into force yet. The Zimbabwean *Access to Information and Protection of Privacy Act* is a classic example of what an FOI law should not be.<sup>48</sup>

Lack of access to information contributes directly and indirectly to the degradation of the environment in sub-Saharan Africa. It is direct where it limits the ability of the poor to protect the environment upon which they depend for their sustenance by affecting either their ability to be effective players in environmental policy and decision-making processes that affect them;<sup>49</sup> or their ability to mobilise support to demand sustainable solutions to their environmental problems.<sup>50</sup> The indirect effect of lack of access to information on environmental degradation is through its contribution in exacerbating poverty which as earlier identified in this

41 See Anderson II, note 38 above at 9.

42 In the *Tiomini* case in Kenya, there was the allegation that some of the parties were bought off thereby facilitating easy extra-judicial settlement of the dispute. See Patricia Kameri-Mbote, 'Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention', (Geneva: International Environmental Law Research Centre, Working Paper 1, 2005), available at [www.ielrc.org/content/w0501.pdf](http://www.ielrc.org/content/w0501.pdf).

43 See AEO 2, note 10 above at 34 and Department for International Development, United Kingdom (DFID), Directorate General for Development, European Commission (EC), United Nations Development Programme (UNDP), & The World Bank Linking Poverty Reduction and Environmental Management: Policy Challenges and Opportunities 32-33 (Washington, DC: The World Bank, 2002).

44 See Sam Olukoya, 'Nigeria: Freedom of Information Bill Proves Elusive', *Inter Press Service*, 21 June 2004, available at <http://www.afrika.no/Detailed/5699.html>.

45 *Id.*

46 The Official Secret Act, Cap 335 LFN 1990.

47 See Lawrence Carter, 'Feature: Ghana Needs to Enact Freedom of Information Law', *Joyonline*, 25 August 2009, available at <http://news.myjoyonline.com/features/200908/34344.asp>; Anne Nderi, 'Africa: Freedom of Information is Democracy's Cornerstone', *Pambazuka News*, 25 September 2008, available at <http://allafrica.com/stories/200809250776.html> and Mukelani Dimba, 'The Right to Information in Africa', *Pambazuka News*, 23 September 2008, available at <http://www.africafiles.org/article.asp?ID=19044>.

48 *Id.*

49 See AEO 2, note 10 above at 34.

50 See Jona Razzaque, 'Implementing International Procedural Rights and Obligations: Serving the Environment and Poor Communities', in Tom Bigg and David Satterthwaite eds., *How to Make Poverty History: The Central Role of Local Organizations in Meeting the MDGs* 175 (London: International Institute of Environment and Development, 2006).

article, is the main cause of environmental degradation in Africa. This is evident from the fact that lack of access to information affects the ability of the poor to make informed livelihood choices, as they are unable to access information regarding market prices for their crops, alternative cropping or pest control options, availability of government assistance or training programs, or opportunities for developing new products or markets for environmental goods.<sup>51</sup> Thus, it can be argued that lack of access to such information affects their prospects of escaping the poverty trap since they are unable to take advantage of new opportunities for generating income and increasing their assets.<sup>52</sup> In addition, lack of information exacerbates poverty as it affects the people's knowledge of their right to land and its resources. As aptly observed by UNDP *et al.*,<sup>53</sup> '[f]or the poor, it is their rights and the enforcement of those rights within the law that usually determine whether they will plant, husband, harvest, and successfully manage the natural resource base for environmental income and environmental wealth or work on the margin of subsistence.'<sup>54</sup>

Furthermore, lack of access to information also affects people's ability to fight corruption that deepens poverty by demanding transparency and accountability in governance from their government. This is due to the fact that in countries where their citizens are uninformed or lacked access to information, there is generally low awareness of what the governments are doing and how they spent their national resources.<sup>55</sup> The low awareness in turn promotes corruption as governments have little incentive to improve performance, deliver on their promises, or even provide basic services at adequate levels, as the possibility of holding them accountable is virtually non-existent.<sup>56</sup> As observed by Transparency

International, '[c]orruption thrives in environments where information is either too segregated or aggregated, is not comparable and prevents conclusions on financial resource utilisation from being drawn.'<sup>57</sup> This is evident from the findings of Reinikka and Svenson that a newspaper campaign in Uganda informing parents and schools of the fund provided by the government for education substantially reduced the fraction of the funds captured by bureaucrats and politicians, and increased true spending in educational infrastructure.<sup>58</sup>

Coupled with the issue of lack of access to information in exacerbating the degradation of the environment in sub-Saharan Africa, is lack of public participation especially by the poor in the decision-making process that affects both their livelihood and well-being including decisions on how government resources are to be distributed, and the environment on which they depend for their sustenance.<sup>59</sup> With regard to the latter, it should be noted that their participation in the policy and planning process is essential to ensuring that key environmental issues that affect their livelihoods and well-being are adequately addressed.<sup>60</sup> In the absence of such participation, not only will development projects such as industries and dams adversely affect the poor through displacement and loss of livelihood, but also rules, intervention and processes otherwise designed to protect the environment, may end up depriving poor people or communities of their livelihood by denying them access to environmental resources or undermining their traditional tenure rights.<sup>61</sup> This in turn stimulates

51 See World Research Institute *et al.*, note 40 above at 73.

52 *Id.*

53 UNDP *et al.*, *Assessing Environment's Contribution to Poverty Reduction* (New York, UNDP, 2005).

54 *Id.*, at 12.

55 See World Research Institute *et al.*, note 40 above at 73. See also Transparency International, *Poverty, Aid and Corruption 9* (Berlin: Transparency International Policy Paper No. 01, 2007).

56 *Id.* See also Nurhan Kocaoglu and Andrea Figari eds., *Using the Right Information as an Anti-Corruption Tool* (Berlin: Transparency International, 2006), available at [http://www.transparentnost.org.yu/aktivnosti/slobodan\\_pristup\\_inf/TI2006\\_europe\\_access\\_information.pdf](http://www.transparentnost.org.yu/aktivnosti/slobodan_pristup_inf/TI2006_europe_access_information.pdf).

57 See Transparency International, note 55 above at 9.

58 R. Reinikka and J. Svenson, 'Fighting Corruption to Improve Schooling: Evidence from a Newspaper Campaign in Uganda', 3 *Journal of the European Economic Association* 1 (2005).

59 See World Resources Institute *et al.*, note 40 above at 75. See also UNEP and IISD, note 31 above at 23.

60 See DFID *et al.*, note 43 above at 32; Dilys Roe, 'The Millennium Development Goals and Natural Resource Management: Reconciling Sustainable Livelihoods and Resource Conservation or Fuelling a Divide?', in David Satterthwaite ed., *The Millennium Development Goals and Local Processes: Hitting the Target or Missing the Point?* 55 (London: IIED, 2003); and Sonja Vermeulen, 'Reconciling Global and Local Priorities for Conservation and Development', in Dilys Roe ed., *Millennium Development Goals and Conservation: Managing Nature's Wealth for Society's Health* 74 (London: IIED, 2004).

61 See Razzaque, note 50 above at 175-176; Roe, note 60 above at 61 and Daniel W. Bromley *Environment and Economy: Property Rights and Public Policy* 131-132 (Oxford: Blackwell, 1991).

resentment and low support for the environmental rules, interventions and processes from the affected surrounding communities.<sup>62</sup> Such resentment and low support will adversely affect the implementation or long-term viability of the environmental rules and processes, as the affected communities will resort to undermining them.<sup>63</sup>

### 2.3 Lack of Access to Justice

The right of access to justice when one's right is infringed or threatened is as much important in empowering people as the rights of public access to information and public participation. The absence of this right contributes to 'lawlessness' in a society, and this in turn, causes or exacerbates poverty with adverse consequence for the protection or conservation of the environment and its resources in Africa.<sup>64</sup> Lack of access to justice may be due to either corruption or procedural injustices in the legal or court systems. With regard to the former, citizens especially the poorest may be denied access to justice when they are unable or unwilling to cough up the money needed to speed up the judicial proceedings or to influence its outcome.<sup>65</sup> When this occurs, the

ability of the judiciary to render impartial and fair decisions is usually compromised while justice is for sale to the highest bidders or bribers.<sup>66</sup> In such a situation, the enjoyment of the democratic right to equal access to courts guaranteed in most African constitutions becomes a mirage. As aptly stated by De Swart, Transparency International Managing Director, '[a]s long as the machinery of law enforcement remains tainted, there can be no equal treatment before the law -as stated in the Declaration- nor can there be any real guarantee of human rights more broadly'.<sup>67</sup>

The procedural injustice in the legal systems in sub-Saharan Africa that affects access to justice is evidenced by the procedural requirement of *locus standi* in public law litigation. This rule of *locus standi* has been employed by the governments or their agencies to frustrate the challenges of their citizens who have resorted to the courts to demand accountability.<sup>68</sup> The effect of this denial of access to judicial remedy is rampant abuse of power and corruption, as public officials are not legally bound to be accountable to their citizens. As observed by Odje regarding the effect of lack of access to justice on corruption in Nigeria:

'Some of the consequences of this restriction on access to Court include unbridled profligacy, perfidy and corruption in high places. Thus, elected officials are no longer accountable to the people, whilst the president becomes vested with unlimited powers! The cumulative result being that today, Nigeria is voted by Transparency International as the sixth most corrupt country in the world. Previously, Nigeria had the World Silver Medal for corruption being placed on an 'enviable second position'.<sup>69</sup>

62 Neema Pathak, Ashish Kothari and Dilys Roe, 'Conservation with Social Justice? The Role of Community Conserved Areas in Achieving the Millennium Development Goals', in Bigg and Satterthwaite eds., note 50 above at 67 & 71.

63 This is exemplified by the recent report of the poisoning of carnivores by Basongora herdsmen occupying part of Uganda's second largest game park. See 'Carnivores Poisoned in Uganda', *24.ComNews*, 26 July 2007, available at <http://www.24.com.news/?=afa&1=607720>.

64 Anderson listed several ways in which lawlessness contributes to poverty. These include unchecked abuse of political power as evidenced by restrictions on freedom of the press and expression that affects global action in response to famine or other major threats to human life, unchecked violence by public officials that deprives poor household of essential income, increase costs, and exacerbate indebtedness; and deprivation of access to public goods as a result of the poor being unable to pay the bribe demanded by officials. See Anderson II, note 38 above at 3-4.

65 See Transparency International, Report on the Transparency International Global Corruption Barometer 2007 6-7 (Berlin: Transparency International, 2007); Transparency International, Summary Report of National Integrity System Studies of DRC, Mauritius, South Africa, Mozambique, Botswana, Zambia and Zimbabwe 12-14 (Berlin: Transparency International, 2007); and Transparency International, The Kenya Bribery Index 2006 (Berlin: Transparency International, 2006). (Ranked Kenya Judiciary as the worst sixth offender).

66 Transparency International, Report on the Transparency International Global Corruption Barometer 2007 6 (Berlin: Transparency International, 2007) and 'Kenya Wields Axe on Judges', *BBC News*, 16 October 2003, available at <http://news.bbc.co.uk/go/pt/fr/-/2/hi/Africa/3195702.stm>.

67 Quoted in Transparency International, 'No Guarantee of Human Rights While Corruption Persists', *Press Release*, 10 December 2007, available at [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2007/2007\\_12\\_10\\_cape\\_town\\_ceremony](http://www.transparency.org/news_room/latest_news/press_releases/2007/2007_12_10_cape_town_ceremony).

68 See Akpo Mudiaga Odje, 'Abuse of Power and Access to Court in Nigeria', *ThisDay*, 16 November 2004, available at <http://www.thisdayonline.com/archive/2004/10/26/20041026law05.html>.

69 *Id.*

Lack of access to justice contributes to the degradation of the environment in sub-Saharan Africa as it affects not only the ability of the citizens especially the poor to demand for the protection of the environment that is essential to their sustenance, but also, hampers the efforts of persons or organisations interested in the protection of the environment. This is more critical where the environmental resources being degraded are national resources for which no particular person can claim a specific tenure rights such as forests and water resources. The lack of access to justice in such a scenario may not be unconnected with the procedural requirement of *locus standi* as most people interested in protecting their national environmental resources may not be able to discharge its onerous requirement. This is apparent in the Nigerian case of *Oronto-Douglas v. Shell Petroleum Development Company Ltd and 5 others*,<sup>70</sup> where the plaintiff, an environmental activist sought to compel the respondents to comply with provisions of the Environmental Impacts Assessment (EIA) Act before commissioning their project (production of liquefied natural gas) in the volatile and ecologically sensitive Niger Delta region of Nigeria. The suit was dismissed on the grounds *inter alia* that the plaintiff has shown no legal standing to prosecute the action.

Lack of access to justice also contributes to environmental degradation in sub-Saharan Africa by undermining the enjoyment of property right especially for the poor. It should be noted that when the poor cannot access the machinery of justice in order to defend themselves against the polluting or degrading activities of individuals, multinational corporations or State sponsored companies, it constitutes a disincentive for them to either take action against persons whose actions degrade their property values, or invest in natural resource management.<sup>71</sup> The latter may lead to poor

people prioritising short-term gains in the face of uncertainty over long-term sustainability, thereby causing environmental degradation and exacerbating their poverty.<sup>72</sup> As observed by the World Resource Institute (WRI), ‘...appropriate property rights regimes are...central to encouraging the poor to invest in their land or in resource management in ways that bring economic development and poverty reduction.’<sup>73</sup>

Finally, lack of access to justice contributes to environmental degradation in sub-Saharan Africa by promoting corruption that deepens in the region, as it affects the ability of the poor to fight corruption by demanding political accountability from their leaders. This is due to the fact that access to administrative or judicial justice is vital if citizens are to challenge abuse of power and corruption by their public officials.<sup>74</sup> It should be noted that administrative justice is obtained by way of petitioning the appropriate agency for redress or sanctions against the corrupt public officials,<sup>75</sup> while judicial justice is by way of petitioning the courts. With regard to the latter, Anderson has identified two important functions of the courts or judiciary with respect to ensuring political accountability vis-à-vis answerability and enforcement.<sup>76</sup> The former refers to the obligation placed upon public officials to make information available about their activities and to give valid reasons for their action.<sup>77</sup> The latter refers to the ability to impose sanctions on political leaders and other public officials who have acted illegally or otherwise violated their public duties, or to give an authoritative pronouncement on which government actions are legal and which are not.<sup>78</sup> The judiciary exercise these accountability functions principally by means of judicial review of either legislation or administrative actions.<sup>79</sup> Judicial review is vital to curbing corruption by acting as a check on the excesses of legislative and executive arms of government.<sup>80</sup>

70 See *Oronto-Douglas v. Shell Petroleum Development Company Ltd and 5 Others*, note 37 above. For an equivalent Ugandan decision, see *Byabazaire Grace Thaddeus v. Mukwano Industries*, Misc. Application No. 909 OF 2000, High Court of Uganda (Kampala Division).

71 See Daniel H. Cole, *Pollution and Property: Comparing Ownership Institutions for Environmental Protection* 6 (Cambridge: Cambridge University Press, 2002); and Bruce Yandle, Maya Vijayaraghavan and Madhusudan Bhatarai, *The Environmental Kuznets Curve: A Primer* 14 (Bozeman Montana: Property and Environment Research Centre, 2002), available at <http://www.maclester.edu/~wests/econ231/yandleetal.pdf>.

72 See Pathak et al, note 62 above at 56.

73 See World Resources Institute et al, note 40 above at 75.

74 See Odje, note 68 above at 2.

75 Such bodies include the Independent Corrupt Practices Commission (ICPC), and Economic and Financial Crimes Commission (EFCC) in Nigeria; Kenya Anti-Corruption Authority (KACA) and the Anti-Corruption Authority of Kenya.

76 See Anderson II, note 38 above at 6.

77 *Id.*

78 *Id.*

79 *Id.*

80 *Id.*, at 7.

## 2.4 Lack of Political Will

Another important factor responsible for causing the environmental degradation in sub-Saharan Africa is the issue of lack of political will on the part of African governments to enforce environmental regulations or to adopt new and proactive regulations that will safeguard the environment from degradation.<sup>81</sup> This reluctance may be due to the economic benefits derived from the activities of the degrading industries in form of revenues and employment opportunities. With regard to the latter, it should be noted that many polluting industries have threatened job cuts when forced to adhere to environmental regulations like changing to cleaner production methods, as it would involve heavy financial expenditure that will render their operations uneconomical.<sup>82</sup> The use of this threat is implicit in the statement of the then Group Managing Director of Shell International Petroleum Company at the parallel annual general meeting of the Company held in the Netherlands in May 1996, when he asked '[s]hould we apply the higher-cost western standards, thus making the operation uncompetitive and depriving the local work force of jobs and the chance of development? Or should we adopt the prevailing legal standards at the site, while having clear plans to improve 'best practice' within a reasonable timeframe?'<sup>83</sup>

Regarding the reluctance of the governments in sub-Saharan Africa to enforce or adopt more stringent environmental regulations due to economic reasons, it is more pronounced where the activities of the polluting or degrading industries is vital to the economy of the

country in question. Thus, the fear that the polluting industries may pull out of the country if required to pay huge environmental costs or adopt more stringent environmental procedure is enough to deter the government.<sup>84</sup> As observed by Professor Onokerhoraye with regard to the enforcement of environmental regulations against oil companies in Nigeria, '[a] number of environmental laws geared towards protecting the environment exist but are poorly enforced. The economic importance of petroleum to national development is such that environmental considerations are given marginal attention'.<sup>85</sup> This is more pronounced where the government is actively involved as a major player in the polluting activities through its agencies or public companies. In such a situation, the government will have less incentive to adopt a rigid and effective enforcement of environmental regulations against itself or its joint venture partners.<sup>86</sup> The setting up of the Nigeria Liquefied Natural Gas (NLNG) project at the Bonny, Rivers State of Nigeria, evidences this reluctance when the government is economically actively involved in a project.<sup>87</sup> According to Emeseh:

'...the mandatory environmental impact assessment required for the establishment of the project was not done until after the project was under way. .... None of the regulatory agencies [involved] attempted to enforce the law and when community problems broke out later, the federal government was actively involved in assisting to a memorandum of understanding (MOU) between the NLNG and the community so that the first shipment of LNG would not be delayed'.<sup>88</sup>

81 See Soji Awogbade, 'What is the Place of Environmental Law in Africa's Development?', *AELEX*, 9 November 2006 at pp 4-5, available at <http://www.worldservicesgroup.com/publicationspf.asp?Id=1597>.

82 See Adegoke Adegoroye, 'The Challenge of Environmental Enforcement in Africa: The Nigerian Experience', Third International Conference on Environmental Enforcement, available at <http://www.inece.org/3rdvol1/pdf/Adegoro.pdf> and Ifeanyi Anago, Environmental Assessment as a Tool for Sustainable Development: The Nigerian Experience (paper prepared for FIG XXII International Congress, Washington D.C., USA, 19-26 APRIL 2002), available at [http://www.fig.net/pub/fig\\_2002/Ts10-3/TS10\\_3\\_anago.pdf](http://www.fig.net/pub/fig_2002/Ts10-3/TS10_3_anago.pdf).

83 Quoted in Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (Washington, DC: Human Rights Watch, 1999).

84 See Joshua Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment', 15 *Boston University International LJ* 261, 291 (1997).

85 Andrew G. Onokerhoraye, 'Towards Effective Environmental and Town Planning Polices for Delta State', available at <http://www.deltastate.gov.ng/enviromental.htm>.

86 See Eaton, note 84 above at 289 & 291 and Nelson E. Ojukwu-Ogba, 'Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, Less Teeth', 8/9 *International Energy Law & Taxation Review* 201, 206 (2006).

87 This project resulted in the *Oronto-Douglas* case where the plaintiff sought to compel the defendants to observe the requirements of the EIA Act in Nigeria, see *Oronto-Douglas v. Shell Petroleum development Corporation and 5 Others*, note 37 above.

88 See Emeseh, note 40 above at 18-19.



The government's reluctance to strictly enforce or adopt new and proactive environmental regulations may also be driven by the need to attract foreign investments.<sup>89</sup> The quest to attract foreign investments in this manner may be motivated by the need to increase the revenue base of the government as well as to provide jobs for citizens.<sup>90</sup> It may also be motivated by the need to comply with its mandatory economic liberalisation and deregulations requirements, the centre piece of the structural adjustment programmes (SAP) imposed on debtor countries of which most sub-Saharan African countries fall into the category, by the international financial institutions spearheaded by the International Monetary Fund (IMF) and the World Bank.<sup>91</sup> Whatever the reason or reasons for attracting foreign investments into sub-Saharan Africa in this manner may be, the end result is that it has led to the transfer of environmentally polluting or 'dirty' industries and technologies into Africa with adverse consequences for its environment.<sup>92</sup>

Furthermore, the reluctance to strictly enforce or adopt new and proactive environmental regulations may be due to corruption. This corruption is mostly in the form of either grand or petty corruption. The former affects environmental policy-making while the latter affects environmental policy implementation.<sup>93</sup> The effect of

corruption on environmental policy-making is that it affects the stringency of environmental policies or regulations. Thus, the higher the rate of corruption or rent-seeking, the lower the stringency of the environmental policies adopted by the State.<sup>94</sup> This situation subsists despite the fact that citizens as a result of an increase in their per capita income levels may have demanded for improved environmental quality from their government. The reason for this state of affairs is that the ability of the citizens to influence higher environmental quality as their income increases is dependent on the responsiveness of their governments.<sup>95</sup> As articulated by Pellegrini and Gerlagh in their seminal article:

‘...corruption levels negatively affect the stringency of environmental policies. Our estimates suggest that, at a cross-country level, a one standard deviation decrease in the corruption variable is associated with a more than two-thirds improvement in the Environmental Regulatory Regime Index. This association appears to be statistically significant and robust. The income variable is associated with less variation of the Environmental Regulatory Regime Index; a one standard deviation increase in the income proxy is associated with 0.16 times one standard deviation increase in the EERRI in regression (4), and the statistical significance ranges from five to ten per cent’.<sup>96</sup>

89 See Ojukwu-Ogba, note 86 above at 207.

90 See Eaton, note 84 above at 277; Abdulai Darimani, ‘Impacts of Activities of Canadian Mining Companies in Africa’, Third World Network – Africa Secretariat, 31 October 2005, available at [http://www.miningwatch.ca/sites/miningwatch.ca/files/Africa\\_case\\_study.pdf](http://www.miningwatch.ca/sites/miningwatch.ca/files/Africa_case_study.pdf) and Basil Enwegbara, ‘The Globalization of Poverty’, *The Tech*, 15 May 2001, available at <http://tech.mit.edu/V121/N26/col26basil.26c.html>.

91 *Id.* at 2 & 7. See also United Nations Commission on Human Rights (UNCHR), Economic, Social and Cultural Rights: Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, Report Submitted by the Special Rapporteur on Toxic Waste, Mrs Fatma-Zohra Ouhachi-Vesely, UN Doc. E/CN.4/2001/55, 19 January 2001, at pp 15-16, 18 & 22-23, paras 35, 39, 45 & 64 respectively and Femi Olokesusi and Osita M. Ogbu, ‘Dirty Industries: A Challenge to Sustainability in Africa’, in Osita M. Ogbu, Banji O. Oyeyinka and Hasa M. Mlawa eds, *Technology Policy and Practice in Africa* (Ottawa: International Development Research Centre, 1995).

92 *Id.* at 2-6 and See also United Nations Commission on Human Rights, note 91 above at 13-16, paras 22-36.

93 See J.K. Wilson and R. Damania, ‘Corruption, Political Competition and Environmental Policy’, 49(5) *Journal of Environmental Economics and Management* 516 (2005) as cited in Pellegrini and Gerlagh, note 72 above at 337.

94 See Edward B. Barbier, Richard Damania and Daniel Leonard, ‘Corruption, Trade and Resource Conversion’, 50 *Journal of Environmental Economics and Management* 276, 277 (2005).

95 See Lorenzo Pellegrini and Reyer Gerlagh, ‘Corruption and Environmental Policies: What are the Implications for the Enlarged EU?’, 16 *Europe Environment* 139, 142-147 (2006). See also Lorenzo Pellegrini and Reyer Gerlagh, ‘Corruption, Democracy, and Environmental Policy: An Empirical Contribution to the Debate’, 15(3) *The Journal of Environment and Development* 332, 336-337 & 340-344 (2006) (hereinafter Pellegrini and Gerlagh II); Lorenzo Pellegrini, Corruption, Economic Development and Environmental Policy, 2003, available at <http://www.feem-web.it/ess/ess03/students/pellegr.pdf> and Jessica Dillon et al, Corruption and the Environment, 13 (A project for Transparency International, Environmental Science and Policy Workshop, Columbia University, School of International & public affairs, April 2006) available at [http://www.wateregovernance.org/downloads/Corruption\\_and\\_the%20Environment\\_Columbia\\_Univ\\_WS\\_May2006.pdf](http://www.wateregovernance.org/downloads/Corruption_and_the%20Environment_Columbia_Univ_WS_May2006.pdf)

96 See Pellegrini and Gerlagh, note 95 above at 146.



When corruption or rent-seeking influences the stringency of environmental regulations or policies, it leads to a form of 'State capture'.<sup>97</sup> State capture refers to the actions of individuals, groups, or firms in both the public and private sectors to influence the formations of environmental laws, regulations, decrees and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials.<sup>98</sup> This evidenced by the decision of the government in Ghana to open up its remaining pristine forest reserves for surface mining irrespective of the ecological consequences.<sup>99</sup> According to Darimani, the intense corporate lobbying of five multinational mining companies in Ghana principally influenced the government's decision.<sup>100</sup>

Petty corruption on the other hand, affects the enforcement of environmental policies or regulations.<sup>101</sup> Such corruption occurs mostly at the level of environmental inspections and policing of illegal acts such as poaching, illegal logging, resource trafficking, discharges and emissions.<sup>102</sup> Several studies have shown that environmental regulations are ineffective and unlikely to be enforced if the bureaucrats and political office holders are corrupt.<sup>103</sup> Therefore, it will appear that the implementation of environmental regulations cannot thrive in a polity where there is pervasive corruption.<sup>104</sup> As stated by the Environmental Public Prosecutor of Madrid, '[t]he non-compliance with environmental laws has its roots in the corruption of the political system.... Non-compliance with environmental laws is the best barometer of corruption in a political system'.<sup>105</sup>

The effect of corruption in the implementation of environmental regulations is evidenced by the controversy surrounding the building of the NGLG project in Nigeria. It should be noted that the mandatory EIA procedures before a project of such magnitude can be carried was not done while none of the regulatory environmental agencies intervened. While it has been argued in this article that the lack of regulatory intervention is motivated by the need to protect government revenue earning capacity, recent events have shown it goes beyond that. This is due to the recently uncovered evidence of massive corruption by political office holders including the then Military Head of State and Oil Minister with regard to the awarding of the contract for the construction of the NGLG facility.<sup>106</sup> This corruption even though on a grander scale, may best explain the reason why officials of both the erstwhile Federal Environmental Protection Agency (now National Environmental Standards and Regulations Enforcement Agency), which was then an integral part of the presidency, and the Department of Petroleum Resources, which is under the supervision of the oil minister, did not intervene.<sup>107</sup>

## 2.5 Weak Institutional Capacity

Even if there is the political will, the ability of the government to enforce environmental regulations or to

97 See World Bank, *Anti-Corruption in Transition: A Contribution to the Policy Debate* (Washington D.C.: World Bank, 2000) as cited in Svetlana Winbourne *Corruption and the Environment* 12 (Washington, D.C.: Management Systems International, 2002), available at [http://pdf.dec.org/pdf\\_docs/PNACT876.pdf](http://pdf.dec.org/pdf_docs/PNACT876.pdf).

98 *Id.*

99 See Darimani, note 90 above at 5.

100 *Id.*

101 See UNCHR, note 91 above at 25, para 75.

102 See Winbourne, note 97 above at 15-16.

103 See Pellegrini and Gerlagh II, note 95 above at 335-336.

104 See Eaton, note 84 above at 219; and P. Robbins, 'The Rotten Institution: Corruption in Natural Resource Management', 19 *Political Geography* 423 (2000) as cited in Pellegrini and Gerlagh II, note 95 above at 336.

105 As quoted in Pellegrini and Gerlagh II, note 95 above.

106 See Anonymous, 'Halliburton and Nigeria: A Chronology of Key Events in the Unfolding of Key Events in the Unfolding Bribery Scandal', *Halliburton Watch*, available at [http://www.halliburtonwatch.org/about\\_hal/nigeria\\_timeline.html](http://www.halliburtonwatch.org/about_hal/nigeria_timeline.html). For instances of corruption in the Nigerian oil sector, see Anonymous, 'PDP, Kupolokun, Obaseki may Appear in US Court - Over N750m Bribery Allegation - FG to Probe Top Officials', *Nigerian Tribune*, 8 November 2007.

107 Assuming that the corruption is vertical in which the political office holders in turn bribe the public officials. For instances of such corruption in South Africa, see Institute for Security Studies, 'Crook, Line and Stinker: the Story of Hout Bay Fishing', *ISS Newsletter*, 26 June 2003, available at <http://www.issafrika.org/Pubs/Newsletter/Umqol/issue0503.html> and Business Anti-Corruption Portal, South Africa Country Profile, available at <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/south-africa/?pageid=98> (reporting the story of a former deputy Minister who after accepting a donation on behalf of his party granted the permission for the building of a golf estate despite the result of environmental impact studies showing that environmentally sensitive areas would suffer from the estate).

adopt new and proactive regulations may be affected by the weak institutional capacity of its regulatory agencies. Such weak institutional capacity is manifested by their lack of scientific and technical expertise.<sup>108</sup> It should be noted that institutional scientific and technical expertise are necessary to monitor compliance with environmental regulations by the regulated industries, or to adopt new regulation as the need arises. Where such expertise is lacking, the regulatory agencies may be forced to rely on self-monitoring by the regulated industries or on the expertise of the regulated industries that can hardly be expected to give honest assistance.<sup>109</sup> As observed by the Special Rapporteur on toxic waste with respect to the illicit trafficking of toxic waste:

‘Waste tends to move towards areas with weak or non-existent environmental legislation and enforcement. Many developing countries [including Africa] are unable to determine the nature of substances crossing their border. Developing countries often lack adequately equipped laboratories for testing and evaluation and the requisite specialised data systems or information on the harmful characteristics of wastes. In a number of cases, offers made to developing countries by waste traders either did not divulge vital information on the nature of the wastes, or the information was distorted; waste brokers mixed one toxic waste with others, or redefined the waste as resource ‘good’.<sup>110</sup>

In addition, such expertise is necessary for a successful prosecution of those found infringing environmental regulations, as it will enable the discharge of the stringent burden of proof in criminal cases. As stated by Kidd,

discharging this burden involves proving technical and scientific facts where it involves failure to meet prescribed standards, of *mens rea* unless expressly excluded by legislation, and *actus reus*, which be might difficult especially in cases of multiple polluters.<sup>111</sup>

The weak institutional capacity of most environmental regulatory agencies may be caused by the lack of adequate funding by their various African governments. Lack of adequate funding is mostly due to the fact that African nations like other developing nations with developmental needs and declining national revenues most often push environmental issues down to the bottom of their national policy agenda while attaching a higher priority to economic and social issues.<sup>112</sup> In such a situation, the funding of environmental management, conservation, and enforcement institutions is usually insufficient.<sup>113</sup> When underfunded, these regulatory agencies lack the ability to acquire and retain the requisite scientific and technical skills.<sup>114</sup> Furthermore, it may lead to corruption by creating a situation where poorly paid and unmotivated officials have an incentive not only to exploit loopholes in laws and regulations, but also, to take bribes during environmental inspections and the policing of illegal environmentally related activities.<sup>115</sup>

In addition, weak institutional capacity may due to corruption by public officials. This usually occurs when public officials divert fund allocated for environmental programmes or projects to private pockets.<sup>116</sup> Such fund

108 See Ernest M. Makawa, Experience of Malawi: Public Role in Enforcement, Fifth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/5thvol1/makaw.pdf>.

109 See O.A. Bowen, ‘The Role of Private Citizens in the Enforcement of Environmental Laws’, in J. A. Omotola ed., *Environmental Law in Nigeria Including Compensation* 165-166 (Nigeria: Faculty of Law, University of Lagos, 1990) and Anthony Uzodinma Egbu, ‘Constraints to Effective Pollution Control and Management in Nigeria’, 20 *The Environmentalist* 13,15 (2000) (observing that neither the FME’s Port Harcourt zonal office or the Rivers State Environmental Protection Agency has a laboratory for water and soil analyses in cases of oil pollution, making them to rely on the polluting oil companies for such determination).

110 See UNCHR, note 91 above at 16-17, para 36.

111 Michael Kidd, ‘Environmental Crime-Time for a Rethink in South Africa?’, 5 *SAJELP* 181,198 (1998).

112 For instance, in Nigeria only 39.2 million Naira of the total fund meant for environment in the First National Development Plan 1962-1968 was disbursed. Similarly, only 14.5 per cent of environmental fund in the Third National Development Plan 1975-1980. See Environmental Right Action (ERA), ‘Institutional Framework for the Protection and Management of the Environment’, *The Guardian*, 8 December 2003, page 72. See also Adegoroye, note 82 above at 48.

113 See Dillon et al, note 95 above at 14.

114 See Wilson M.K. Masilingi, ‘Social-Economic Problems Experienced in Compliance and Enforcement in Tanzania’, Fourth International Conference on Environmental Enforcement, available at <http://www.inece.org/3rdvol2/masilingi.pdf>.

115 See Dillon et al, note 95 above and Winbourne, note 97 above at 8.

116 See Kingsley Nweze, ‘Senate: Govs Spend Ecological Funds on Entertainment’, *ThisDay* 3 January 2008.

may be from budgetary or statutory allotment, donations and grants from other bodies. This is exemplified by the action of a former governor in Nigeria who misappropriated N100 million from his State's ecological fund to fund an unknown endeavour of the immediate past president of Nigeria.<sup>117</sup> Finally, armed conflict contributes to low institutional capacity in most African countries by diverting funds mostly to war efforts as well as facilitating loss of enforcement personnel through either death or displacement.<sup>118</sup>

### 3 A HOLISTIC APPROACH TO ENVIRONMENTAL PROTECTION IN SUB-SAHARAN AFRICA

It is apparent from the above discussion that the factors responsible for the degraded state of sub-Saharan Africa's environment and consequent non-realisation of the right to environment are varied and go beyond purely environmental issues, to include wider socio-economic and political issues. Thus, any approach towards enhancing the protection of the environment and realisation of the right to environment in sub-Saharan Africa must take cognisance of these issues in order to effectively tackle the underlying causes of environmental degradation. In essence, any approach for the protection of the environment in sub-Saharan Africa must not only target the conservation of the environment, but also, must seek to address poverty and other causes of environmental degradation in the region. Hence, the need for sub-Saharan African countries to adopt a holistic or integrated approach in addressing the problem of environmental degradation in the region. In adopting such approach, this article advocates the promotion of good governance and sound socio-economic reform in

sub-Saharan Africa as the core elements. This is due to the fact that good governance and sound socio-economic reform are vital and complementary ingredients in creating the enabling environment for the achievement of sustainable development objectives including poverty reduction, environmental protection and realisation of the right to environment in sub-Saharan Africa.<sup>119</sup> Promoting good governance and sound socio-economic reform for the achievement of

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119. See United Nations Development Programme (UNDP), *Governance for Sustainable Human Development* 9-11 (New York: UNDP Policy Document, 1997) available at <http://www.pogar.org/publications/other/undp/governance/undppolicydoc97-e.pdf>. We the People: The Role of the United Nations in the 21st Century, U.N.Doc. GA/9704, available at <http://www.un.org/News/Press/docs/2000/20000403.ga9704.doc.html>; United Nations General Assembly Resolution 55/2, United Nations Millennium Declaration, UN Doc. A/Res/55/2 (2000) (hereinafter Millennium Declaration); In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General, UN Doc. A/59/2005, 21 March 2005; Road Map Towards the Implementation of the Millennium Declaration: Report of the Secretary-General, UN Doc. A/56/326, 6 September 2001 (hereinafter MDG roadmap); Monterrey Consensus on Financing for Development, UN Doc. A/CONF.198/11, 22 March 2002, at paras 11, 40 & 61; Plan of Implementation of the World Summit on Sustainable Development, *in* Report of the World Summit on Sustainable Development, Johannesburg, 26 August – 4 September 2002, UN Doc. A/CONF.199/20 (2002), at paras 4, 62(a), 138 & 141; 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, at paras 11, 24(b) 39 & 68; and United Nations Economic Commission for Africa, *Governance for a Progressing Africa: Fourth African Development Forum* (Addis Ababa: United Nations Economic Commission for Africa, 2005) (where the Executive Secretary of UNECA acknowledged that 'no matter what sectoral problem or national challenge we face, over and over again, governance turns out to be pivotal.'). See also Shadrack Gutto, 'Modern 'Globalisation' and the Challenges to Social, Economic and Cultural Rights for Human Rights Practitioners and Activists in Africa', *Africa Legal Aid* 12, 13 (Oct.-Dec. 2000); Nsongurua J. Udombana, 'How Should We then Live? Globalization and the New Partnership for Africa's Development', 20 *Boston University Int'l L.J.* 293, 320-345 (2002); Shedrack C. Agbakwa, 'Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights', 5 *Yale Hum. Rts. & Dev. L.J.* 177, 181 (2002); and Ministerial Statement, Conference of African Ministers of Finance, Planning and Economic Development/Fortieth session of the Commission, Addis Ababa, Ethiopia, 2-3 April 2007, at paras 7-9, available at [http://www.sarpn.org.za/documents/d0002484/Ethiopia\\_Conference\\_Apr2007.pdf](http://www.sarpn.org.za/documents/d0002484/Ethiopia_Conference_Apr2007.pdf).

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117. See Victor E. Eze, 'Monitoring the Dimensions of Corruption in Nigeria', *Nigeria Village Square* Monday, 25 September 2006 available at <http://www.nigeriavillagesquare.com/articles/victordike/monitoring-the-dimensions-of-corruption-in-ni.html>.

118. This is exemplified by the impacts of armed conflict on the national parks in the Great Lakes Region of Africa. See AEO 2, note 10 above at 400-403; and Reuters, 'Gunmen Kill Ranger in DRC', *News24.com*, 31 August, 2007.

sustainable development objectives in sub-Saharan Africa implicates the following:

### 3.1 Strengthening Rule of Law

Rule of law which is a vital aspect of good governance, guarantees to the citizens and residents of the country 'a stable, predictable and ordered society in which to conduct their affairs'.<sup>120</sup> The key elements of the rule of law include *inter alia* the making or existence of reasonable and fair laws and regulations including human rights, environmental and economic laws, that are relevant to the social needs and aspirations of society; reasonable degrees of understanding and general commitment in the society as a whole (institutions and entities, public and private, including the State itself) to the principle of governance in accordance with the law; equality before the law and non-discrimination of citizens; and independent, efficient and accessible judicial systems.<sup>121</sup> The rule of law is very important to the achievement of sustainable development objectives including environmental protection and realisation of the right to environment in sub-Saharan Africa. As aptly argued by Shelton:

‘...the rule of law – provides the indispensable foundation for achieving all three of the...essential and interrelated aspects of sustainable development. If economic...and social development, and environmental protection are visualised as the rings of the planet Saturn, then the rule of law forms the

planet itself: its gravitational pull holds the rings together and ensures their continued existence, stability and functioning’.<sup>122</sup>

Strengthening the rule of law for the achievement of sustainable development objectives including environmental protection in sub-Saharan Africa requires the establishment and maintenance of the independence and integrity of the judiciary. It should be noted that a corrupt and politicised judiciary is a weak link in the governance structure as it erodes the citizens’ confidence in the State.<sup>123</sup> In addition, laws and regulations no matter how good or benign to citizens well-being and development, are meaningless and cannot contribute to sustainable development without a transparent, efficient and effective judicial system to enforce them.<sup>124</sup> This is of particular importance to the implementation and enforcement of environmental constitutional provisions and laws which are not only susceptible to violation by private individuals, but also, by the State for various reasons enumerated in the preceding section of this article. The importance of a transparent, effective and independent judicial system to the achievement of sustainable development objectives including environmental protection is that it offers ‘an arena in which people can hold political leaders and public officials to account, protect themselves from exploitation by those with more power, and resolve conflicts that are individual or collective’.<sup>125</sup>

In addition, strengthening the rule of law in sub-Saharan Africa requires the promotion or improvement of accountability and transparency in the conduct of governmental affairs, which is essential for tackling the

120. See Gita Welch and Zahra Nuru eds., *Governance for the Future: Democracy and Development in the Least Developed Countries* 41-42 (New York: UN-OHRLS & UNDP, 2006).

121. *Id* at 181-182. See also Sachiko Morita and Durwood Zaelke, ‘Rule of Law, Good Governance, and Sustainable Development’, available at [http://www.inece.org/conference/7/vol1/05\\_Sachiko\\_Zaelke.pdf](http://www.inece.org/conference/7/vol1/05_Sachiko_Zaelke.pdf); Shadrack B. O. Gutto, *The Rule of Law, Human and Peoples’ Rights and Compliance/Non-Compliance with Regional and International Agreements and Standards by African States* (paper prepared for presentation at the African Forum for Envisioning Africa, Nairobi, Kenya, 26–29 April 2002), available at <http://www.worldsummit2002.org/texts/ShadrackGutto2.pdf> (hereinafter Gutto II); and Swiss Agency for Development and Cooperation (SDC), *Governance – Human Rights – Rule of Law: a Glossary of some Important Terms*, available at [http://www.deza.admin.ch/ressources/resource\\_en\\_24370.pdf](http://www.deza.admin.ch/ressources/resource_en_24370.pdf).

122. See Dinah Shelton, ‘Sustainable Development Comes from Saturn’, 15(3) *Our Planet* 20, available at <http://www.unep.org/OurPlanet/imgversn/153/shelton.html>. See also Welch and Nuru, note 120 above at 30; Morita and Zaelke, note 121 above at 1; Tommy Koh, ‘Rule of Man or Rule of Law?’, 15(3) *Our Planet* 14, available at <http://www.unep.org/OurPlanet/imgversn/153/koh.html>.

123. See Aisha Ghaus-Pasha, *Governance for the Millennium Development Goal: Core Issues and Good Practices* 58 (UNDESA 2006).

124. See Morita and Zaelke, note 121 above at 1; and Welch and Nuru, note 120 above at 126-127.

125. See Anderson II, note 38 above at 1. See also Welch and Nuru, note 120 above at 118; and United Nations Report of the International Conference on Financing for Development, UN Doc. A/CONF.198/11 (2002).

hydra-headed problems of corruption and other abuses of power that deepen poverty and environmental degradation in the region. Accountability and transparency requires the presence of democratic mechanisms that can prevent concentrations of power and encourage accountability in a political system. Such mechanisms include the right to vote and other mechanisms for promoting or encouraging citizens' participation and voice in governance;<sup>126</sup> a clear constitutional separation of power between the different branches of government coupled with effective checks and balances so that no branch of government exceeds its authority and dominates the others;<sup>127</sup> establishment of right of access to information; and promoting the watchdog role of civil society in a political system by removing restrictive legislation that not only tightens government control over the civil society, but also, reduces their ability to check nepotism, corruption and 'elite capture' through monitoring the public and private sector at all levels.<sup>128</sup>

Furthermore, strengthening the rule of law in sub-Saharan Africa requires an efficient, responsive, transparent and accountable public administration.<sup>129</sup> Such a public administration system is not only of paramount importance for the proper functioning of a country, it is also the basic means through which government strategies to achieve sustainable development objectives including poverty reduction and the protection of the environment can be implemented.<sup>130</sup> This is evident from the fact that a skilled and properly managed public administration system is not only efficient in the use of public resources and effective in delivering public goods, but also, is capable of meeting the public expectations with regard to ensuring equitable distribution and access to opportunities, as well as the sustainable management of natural resources.<sup>131</sup> The latter will include the enforcement of environmental regulations or the adoption of new and proactive regulations when the

need arises. Also, such a public administration system significantly improves the chances of preventing corruption from taking root and from flourishing.<sup>132</sup>

### 3.2 Promoting Respect for Human rights

Promoting respect for human rights for the achievement of sustainable development objectives including environmental protection in sub-Saharan Africa, demands that States respect not only civil and political rights, but also, social, economic, cultural and environmental rights.<sup>133</sup> This is because these rights ensure empowerment, voice, access to social services, and equality before the law.<sup>134</sup> Thus, respect for certain civil and political rights such as access to information including environmental information, public participation in governance including environmental decision-making process, and access to justice in instances of environmental harm, is essential to environmental protection and realisation of the right to environment. In addition, promoting respect for all human rights including socio-economic and environmental rights is essential to the prevention of armed conflicts and civil wars, one of the causes of poverty in sub-Saharan Africa, as it not only provides citizens with political stability, but also, socio-economic security including employment, healthcare and shelter.<sup>135</sup> As aptly observed by Agbakwa, '[d]enial of socio-economic rights (or any rights at all) is hardly conducive to peaceful co-existence. It is usually a

126 See Ghaus-Pasha, note 123 above at 55.

127 *Id.* at 28.

128 See Welch and Nuru, note 120 above at 92-93.

129 See Shelton, note 122 above.

130 See Ghaus-Pasha, note 123 above at 24. See also United Nations General Assembly Resolution 57/277, Public Administration and Development, UN Doc. A/RES/ 57/277 (2003).

131 *Id.*

132 See Welch and Nuru, note 120 above at 65.

133 See United Nations General Assembly Resolution 55/2, note 119 above, para 24; Monterrey Consensus on Financing for Development, note 119 above, para 11; Plan of Implementation of the World Summit on Sustainable Development, note 119 above, paras 5 & 138; and 2005 World Summit Outcome, note 120 above, paras 12 & 24 (b).

134 See Shadrack C. Agbakwa, 'A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa', 47(1) *Journal of African Law* 38, 58-62 (2003). (Hereinafter Agbakwa II).

135 See preambular paragraph 3, Universal Declaration on Human Rights (UDHR), G.A. Res. 217, UN Doc.A/810 (1948); Agbakwa II, note 134 above at 38-47; Rachel Murray, 'Preventing Conflicts in Africa: The Need for a Wider Perspective', 45(1) *Journal of African Law* 13 (2001); and United Nations Development Programme (UNDP), Human Development Report 2005: International Cooperation at a Crossroads-Aid, Trade and Security in an Unequal World 165-167 (New York: UNDP, 2005).



wellspring of popular discontent and violent conflicts'.<sup>136</sup> This is evident from the present situation in the Niger Delta region of Nigeria where the environmentally degrading activities of multinational oil companies in collaboration with the State, as well as the overall neglect of the socio-economic needs of the region by successive governments in Nigeria, has led to armed conflict and other social ills such as kidnappings and armed robberies.<sup>137</sup>

Promoting respect for human rights is only possible when States establish transparent and accountable systems of governance, grounded in the rule of law, and provide access to justice for all members of society.<sup>138</sup> With regard to the latter, providing access to justice involves not only strengthening the judicial system, but also, guaranteeing or facilitating access to justice for all citizens, especially the most vulnerable individuals in society.<sup>139</sup> This will involve improving or reforming the judiciary in Africa, in order to make them pro-poor. Required actions in this area include the wide distribution of adequately funded and staffed courts in local communities and rural areas, in order to minimise the long delays in procuring justice; access to legal aid; and tackling judicial corruption by demanding judicial accountability.<sup>140</sup> Judicial accountability is essential if judges are to decide cases fairly and impartially, and for the public including the poor, to perceive the judiciary as an impartial, accessible body that strives to protect their rights and not that of vested interests.<sup>141</sup> As observed by Welch and Nuru, 'if the judicial system is weak and unpredictable, then efforts to provide remedies through the courts will be problematic. It is at the judicial

level that corruption does the greatest harm [to the poor] and where reforms have the greatest potential to improve the situation'.<sup>142</sup>

There is also the need for States in sub-Saharan Africa to undertake legal reforms that will enhance the poor's access to legal and administrative remedies. This will include liberalising the *locus standi* rule to create greater access for individuals and NGOs acting in the public interest in instances of environmental degradation, corruption and other abuses of office; eliminating antiquated laws with anti-poor bias; and reducing legal technicalities and simplifying legal language.<sup>143</sup> Furthermore, increasing the poor's access to legal information including environmental information, as well as raising their legal literacy level, is vital to improving their ability to access legal remedies.<sup>144</sup> Also, the role of civil society organisations including NGOs in promoting or procuring access to justice for the poor should be supported and strengthened.<sup>145</sup> This is very important as in most instances of environmental degradation, the hope of the poor in getting legal or judicial redress rests mostly on the activities of the NGOs.<sup>146</sup> In addition to the courts, the establishment of independent human rights institutions or ombudsman offices, as well as effective law enforcement outfits are equally relevant. This is very important as '[p]ublic access to information is vital for effective environmental management. A free media has been instrumental in highlighting environmental problems in both the public and the private sectors. In some countries, the State has effectively used public pressure by making information publicly available in order to encourage greater pollution compliance'.<sup>147</sup>

136. See Agbakwa II, note 134 above at 42.

137 For a detailed discussion of the situation in the Niger Delta region of Nigeria, See Victor Ojaborotu, *Natural Resources and Conflicts within African States: Oil, Niger Delta and Conflict in Nigeria* (Paper Presented at the United Nations University (UNU), Global Seminar on 'Africa's Natural Resources: Conflict, Governance and Development', held at the Wits Club, University of the Witwatersrand, Johannesburg, South Africa, 29-30 October 2008) (not yet published).

138 See Welch and Nuru, note 120 above at 118.

139 *Id.* at 127.

140 See Njuguna Ng'ethe, Musambayi Katumanga and Gareth Williams, *Strengthening the Incentives for Pro-Poor Policy Change: An Analysis of Drivers of Change in Kenya, 2004*, available at <http://www.gsdr.org/docs/open/DOC24.pdf>.

141 See Welch and Nuru, note 120 at 135-136 and ANSA-Africa, 'Kenya: PM Criticizes the Judiciary', *Kenya Broadcasting Corporation*, 24 October 2008.

142 *Id.* at 135.

143 See Anderson II, note 38 above at 24.

144 *Id.*

145 *Id.* See also Ghaus-Pasha, note 123 above at 60.

146 For example, the communication brought against the Nigerian government for environmental and other abuses against the Ogoni minority group of Nigeria, was instituted on their behalf by an NGO. *Social and Economic Rights Action Center (SERAC) and another v Federal Republic of Nigeria* Communication 155/96, Decision of the African Commission on Human and Peoples' Rights. (Interpreting this right under the African Charter). Available at <http://www.cesr.org/text%20files%20final%20Decision%2000%20the%20Ecosoc%20matter.pdf>. (Hereinafter *SERAC* communication).

147 See Department for International Development et al, note 43 above at 32.



In addition, States must promote and ensure the existence or promulgation of laws consistent with international human rights standards. This will include laws that are not discriminatory, but instead empower the vulnerable groups in society such as those providing for their or their representatives' access to information and participation in governance including environmental decision-making process. With regard to access to information, required actions include publishing or providing *inter alia* public access to laws and regulations; budgets, official data and performance indicators; fully audited account of the central bank and of the main state enterprises such as those related to extractive industries; procurement rules; and incomes and assets of public officials and parliamentarians.<sup>148</sup> In addition, government are required to provide legal protection for the press and strengthen media freedom, in order to facilitate public access to a flow of information including environmental information.<sup>149</sup>

### 3.3 Promotion of Democratic Governance

The promotion of democratic governance is vital as the existence of democratic processes, principles and institutions, which enable and promote pluralistic and non-discriminatory participation, is indispensable to the achievement of sustainable development objectives including poverty reduction, environmental protection and realisation of the right to environment.<sup>150</sup> The UNDP has identified the promotion of participation through democratic governance as the third pillar of a 21<sup>st</sup> century human development strategy.<sup>151</sup> Similarly, the 2005 *South African MDG Report* states that the key to the institution of policies and programmes for the improvement of the quality of life of all people of South

Africa is the creation of a democratic state and the extension of a universal franchise.<sup>152</sup> The link between democratic governance and the achievement of equitable socio-economic development has been comprehensively analysed by the UNDP in its 2002 *Human Development Report*. The Report finds that '[a]dvancing human development requires governance that is democratic in both form and substance—for the people and by the people'.<sup>153</sup> This finding is based on the premise that democratic governance is not only valuable in its own right, but also, can advance human development.<sup>154</sup>

The promotion of democratic governance is also vital for the third aspect of sustainable development – environmental protection, which is essential to the realisation of the right to environment.<sup>155</sup> This is due to the fact that the protection or conservation of the environment generally fares badly under autocratic governments than under democratic ones, as evidenced by the poor environmental performance of both the apartheid and military regimes in both South Africa and Nigeria respectively.<sup>156</sup> Furthermore, the environmental calamity of the former Soviet Union and the Eastern Communist Bloc attests to the negative effects of autocratic regimes on the protection of the environment. Such poor environmental performance is mostly due to autocratic governments' abject disregard for the natural environment in preference for political and economic considerations.<sup>157</sup> This is exacerbated by 'a [general] lack of transparency—autocratic governments are notoriously poor in monitoring environmental pollution, collecting information about polluters, tabulating the

148 See UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* 116-118 (New York: UNDP, 2005).

149 *Id.* See also Ghaus-Pasha, note 123 above at 19.

150 See Monterrey Consensus on Financing for Development, note 119 above, paras 11 & 61; 2005 World Summit Outcome, note 120 above, para 24 (a) and United Nations General Assembly Resolution 55/2, note 119 above, paras 6 & 13.

151 The first two being investing in education and health, and promoting equitable economic growth. See United Nations Development Programme (UNDP), *Human Development Report 2002: Deepening Democracy in a Fragmented World* 53 (New York: Oxford University Press, 2002).

152 See Government of the Republic of South Africa, *Millennium Development Country Report 2005*, 2005, available at <http://www.undp.org.za/mdgcr.doc>. (hereinafter South African MDG Report 2005).

153 See United Nations Development Programme, note 151 above at 3. See generally Chapter two of the Report dealing with '[d]emocratic governance for human development'.

154 *Id.*

155 See James C. Kraska, 'Global and Going Nowhere: Sustainable Development, Global Governance & Liberal Democracy', 34 *Denver J. Int'l L. & Policy* 247, 279 (2006).

156 See South African MDG Report, note 152 above at 45-46; Raewyn Peart and Jessica Wilson, 'Environmental Policy-making in the New South Africa', 5 *SAJELP* 237, 238-240 (1998) and Eaton, note 84 above at 266-271.

157 See Kraska, note 155 above at 156. See also Peart and Wilson, note 156 above at 239 and Eaton, note 84 above at 289 & 291.

data and releasing it to the public'.<sup>158</sup> In contrast, democratic governance, by encouraging political freedom and participation in the decisions that shape one's life – underpinned by freedom of speech and thought, freedom of information, free and independent media and open political debate, gives citizens a voice that allows them to be heard in public policy-making.<sup>159</sup> The resultant public pressure can influence decisions and actions of public officials as well as private agents with regard to environmental pollution and other environmental abuses.<sup>160</sup> As aptly observed by James Kraska:

‘...open societies are far more likely to produce effective political counterweights to polluting commercial enterprise.... This is because the transparency and the widespread distribution of information in a free society encourage better environmental practices... Democratic regimes tend to distribute information about the environment, around which popular expressions of concern can collect. In a free society, people may gather unhindered to form interest groups and to lobby for stricter regulations. Principles of open debate permit environmentalists to distribute educational materials and promote new ideas. The flow of information in a democracy also informs a free media, making it more likely that the government will be challenged on environmental issues’.<sup>161</sup>

Promoting democratic governance for sustainable development in sub-Saharan Africa requires strengthening democratic institutions and promoting democratic politics.<sup>162</sup> Strengthening democratic institutions is necessary as they implement policies that are necessary to democracy and development.<sup>163</sup> Most

importantly, they constitute formal accountability mechanisms through which citizens can check the powers of their elected leaders and influence decisions including those relating to the protection of their environment, thereby forcing governments to ‘internalise’ the social costs of their opportunistic behaviour.<sup>164</sup> Strengthening democratic institutions requires African leaders to *inter alia* develop stronger vehicles for formal political participation and representation through political parties and electoral systems; strengthen checks on arbitrary power by separating powers among the executive, an independent judiciary and the legislature, as well as by creating effective independent entities such as ombudspersons, electoral commissions and human rights commissions;<sup>165</sup> and develop free and independent media, as well as a vibrant civil society, able to monitor government and private business and provide alternative forms of political participation.<sup>166</sup>

Democratic politics on the other hand is essential towards enabling citizens especially the poor and the marginalised to claim their rights and overcome institutional obstacles.<sup>167</sup> In the absence of democratic politics, public decisions in democracies including those relating to the protection of the environment as well as the utilisation of the resources may end up responding more to interest groups such as big business or the corrupt elite than to the public.<sup>168</sup> When people enjoy civil and political liberties, they can put pressure on public decision-making for their interests.<sup>169</sup> As observed by the UNDP in its *2002 Human Development Report* ‘[a]n alert citizenry is what makes democratic institutions and processes work. Political pressure from

158 *Id.* See also Cynthia B. Schultz and Tamara Raye Crockett, ‘Economic Development, Democratization and Environmental Protection in Eastern Europe’, 18 *B. C. Envtl. Aff. L. Rev.* 53, 62 (1990). See also Peart and Wilson, note 156 above at 239-240.

159 See United Nations Development Programme, note 151 above at 56-57.

160 *Id.* See also South African MDG Report, note 152 above at 45.

161 See Kraska, note 155 above at 304.

162 See United Nations Development Programme, note 151 above at 64. See also Patrick Chabal, ‘The Quest for Good Government and Development in Africa: is NEPAD the Answer?’, 73(3) *International Affairs* 447, 456 (2002).

163 Nsongurua J. Udombana, ‘Articulating the Right to Democratic Governance in Africa’, 24 *Michigan J. Int’l L.* 1209, 1271 (2003). (Hereinafter Udombana II).

164 *Id.* at 1272. See also United Nations Development Programme, note 151 above at 64 and Rod Alence, ‘Political Institutions and Developmental Governance in Sub-Saharan Africa’, 42(2) *Journal of Modern African Studies* 163, 166-167 & 173-176 (2004).

165 See United Nations Development Programme, note 151 above at 71-74. See also Alence, note 164 above at 175-177 and Udombana II, note 163 above.

166 *Id.* at 75-79. See also Chabal, note 162 above at 452 & 457 and Udombana II, note 163 above at 1274-1276.

167 *Id.* at 79. See also Alence, note 164 above at 176-178 and Udombana II, note 163 above at 1283.

168 See Sakiko Fukuda-Parr, *The Millennium Development Goals and Human Development* International Symposium, Tokyo, 9 October 2002, at 5.

169 *Id.*

below is usually the most effective trigger of change'.<sup>170</sup> Such pressure can crystallise into new environmental activism that leads to greater government responsiveness to environmental matters.<sup>171</sup> It can also influence the development of macro-economic policies that contribute to enhancing the basic capabilities of the poor such as the allocation of an adequate proportion of public expenditure for basic education and health services; the channelling of more credit to sectors like agriculture and promoting development of small and medium-scale enterprises and micro-credit; or/and the institution of pro-poor trade policy that would focus on providing incentives for the export of labour-intensive manufactures and providing some protection to small farmers to ensure food security and rural livelihoods.<sup>172</sup> As observed by Ghaus-Pasha, an important issue in the promotion of pro-poor policies is 'the nature of political and economic institutions. Those in which policy making is transparent and participatory are more likely to promote the adoption of pro-poor policies'.<sup>173</sup>

### 3.4 Promotion of Education, Health and Other Socio-economic Reform

Sub-Saharan African governments must also promote sound socio-economic reform in order to enhance the achievement of sustainable development objectives including environmental protection and realisation of the right to environment in the region. This requires restructuring and reinvigorating their regulatory and economic policies in order to reduce their marginalisation, speed up their integration into the globalisation process, and combat poverty.<sup>174</sup> Required actions in this area include removing obstacles to private investment by streamlining and strengthening their domestic legal frameworks for doing business, improving public investment in infrastructure, and providing education to ensure that domestic firms respond to new

opportunities associated with greater integration.<sup>175</sup> In addition, African countries need to invest in their health and educational infrastructures, as improving both health and education of their citizens will lead to higher productivity and per capita income, and which in turn will positively affect the protection of the environment. Some sub-Saharan African countries like South Africa has to a certain extent improved its health and educational facilities, while others like Nigeria has witnessed a steady deterioration of such facilities, thereby depriving poor Nigerians access to good education and healthcare.<sup>176</sup>

Furthermore, they should reform their agricultural policies including promoting agricultural research, since agriculture is the dominant sector of the region's economy.<sup>177</sup> This is necessary to avoid a situation where a country like Nigeria has gone from being the major exporter of palm products to being a net importer of the same product incidentally from both Malaysia and Indonesia that acquired the technical knowledge relating to its cultivation probably from Nigeria.<sup>178</sup> Most importantly, sub-Saharan African countries need to entrench the human dimension in all their development policies. As aptly argued by Udombana, '[h]umanity must be the objective and supreme beneficiary of development, otherwise development becomes a meaningless vanity and vexation of the spirit'.<sup>179</sup> To achieve this, African countries must take tangible measures that will deliver to its citizens basic needs such as nutritional food, affordable housing, clean drinking water, effective and affordable drugs, reliable electricity and telecommunications, functional educational systems, and efficient transportation networks.<sup>180</sup>

170. See United Nations Development Programme, note 151 above at 79.

171. See Kraska, note 155 above at 279 & 304.

172. See Ghaus-Pasha, note 123 above at 23-24, Lorna Gold, 'Are the Millennium Development Goals Addressing the Underlying Causes of Injustice? Understanding the Risks of the MDGs', *Trocaire Development Review* 23, 33-35 (2005) and Fukuda-Parr, note 168 above.

173. *Id.* at 24.

174. See Udombana, note 119 above at 54.

175. World Bank, *Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda* xv-xvi (Washington, DC: World Bank, 2003).

176. Some commentators may contest the issue of South Africa improving its educational and health facilities. However, when compared to most African countries, it can be argued that the government of South Africa has really tried in this regard.

177. See Udombana, note 119 above at 56-57.

178. See United Nations Food and Agriculture Organisation (FAO), *Small Scale Palm Oil Processing in Africa* (Rome: Food and Agriculture Organisation, FAO Agricultural Services Bulletin No. 148, 2002), available at <ftp://ftp.fao.org/docrep/fao/005/y4355E/y4355E00.pdf>.

179. See Udombana, note 119 above at 57.

180. *Id.* at 59.

## 4 CONCLUSION

This article shows that despite the existence of various regulatory frameworks for the protection of the environment in sub-Saharan Africa, most of the citizens do not enjoy a right to environment as a result of environmental degradation. It further discusses the various factors responsible for the degradation of Africa's environment. It should be noted that these factors are not only interlinked but also complement each other in contributing to environmental degradation in sub-Saharan Africa. This can be seen from the fact that poverty not only affects the willingness of African countries to adopt and enforce environmental regulations, but also, the capacity of their regulatory agencies to enforce such regulations. In addition, events or issues that causes or exacerbates poverty in Africa may also be responsible for the reluctance of African governments to enforce existing environmental regulations or adopt new regulations as the need arises. Due to the multidisciplinary nature of these militating factors, this article suggests sub-Saharan African countries adopt a holistic or integrated approach towards addressing the problem of environmental degradation and non-realisation of the right to environment in Africa. It further suggests that good governance and sound socio-economic reform should form an integral core of such approach as they are vital ingredients in tackling the root causes of environmental degradation in Africa.

It appears that African leaders have realised the need to promote good governance and socio-economic reform in the region by their adoption of NEPAD. The NEPAD initiative despite its shortcomings offers a common programmatic tool for the achievement of good governance and socio-economic reform in Africa. Its major problem is whether member States of the African Union can mobilise enough political will to translate their provisions into concrete results.<sup>181</sup> Presently, despite the

pledge of African leaders under NEPAD to hold themselves accountable for creating the enabling environment for the achievement of sustainable development, the problem of bad governance is still afflicting many countries in the region. This is exemplified by the Zimbabwe crisis where Robert Mugabe, its 84-year old dictator, expressed his contempt for democracy in the wake of the March 2008 general election which he lost that '[w]e are not going to give up our country for a mere X on a ballot. How can a ballpoint pen fight the gun?'<sup>182</sup> He went on to declare that only God would dethrone him.<sup>183</sup> These chilling words came from a man whose brutal regime and repressive polices have not only decimated the economy, but also, have plunged a country once hailed as the 'food basket' of southern Africa into a country where most of its citizens are dependent on food aid. It should be noted in a situation of bad governance as currently being experienced in Zimbabwe, while the resulting poverty, disease and hunger grab world attention, the environment is usually the silent victim or consequence.<sup>184</sup>

The commitment of African nations must be matched by equivalent commitment on the part of developed nations towards meeting their millennium commitment to create the global enabling environment for the achievement of poverty reduction and sustainable development in Africa. This implies meeting not only their commitments under various multilateral environmental agreements, but also, their commitments on aid, debt and trade as concretised under the Millennium Development Goals (MDGs) and other agreements, especially in relation to Africa. So many promises have been made by developed nations in relation to Africa as evident by the G8 African Action

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182 Quoted in Rt. Hon. Raila A Odinga, Prime Minister of the Republic of Kenya, Democracy and the Challenge of Good Governance in Africa (Paper Delivered at the 25th Anniversary of the Guardian Newspaper in Lagos, Nigeria, 9 October 2008), available at <http://www.africanloft.com/raila-odinga-africa-is-a-continent-of-huge-contrasts-kenyan-prime-ministeraddresses-nigerian-media-house/>.

183 See Rt Hon Raila Odinga, Prime Minister of Republic of Kenya, Leadership and Democracy in Africa, 22 July 2008, available at [http://www.chathamhouse.org.uk/files/11845\\_220708odinga.pdf](http://www.chathamhouse.org.uk/files/11845_220708odinga.pdf). (Hereinafter Odinga II).

184 See Anonymous, 'Economic Woes Take Toll on Environment in Zimbabwe', *Business Report*, 30 August 2007 and Masimba Biriwasha, 'Zimbabwe: A Cry for the Environment', *Ecoworldly*, 30 July 2008.

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181 See Chabal, note 163 above and Okey Onyejekwe, in 'AFRICA: Interview with governance expert Prof. Okey Onyejekwe', *IRIN*, Humanitarian News and Analysis, 16 October 2003, available at <http://www.irinnews.org/report.aspx?reportid=46722> (both arguing that African leaders are half-heartedly committed to multiparty democracy was a way to access foreign resources and even sometimes a mechanism for self-perpetuation).

Plan and the supporting Gleneagles Communiqué.<sup>185</sup> However, recent evidence has shown that while there has been some progress in reducing Africa's debt burden, the attitude of developed countries towards meeting their overall commitments has at best been tepid.<sup>186</sup> The major challenge is for developed nations to concretise their commitments into actions as such is critical for the achievement of sustainable development objectives including poverty reduction, environmental protection and realisation of the right to environment in Africa.

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<sup>185</sup> See G8 Africa Action Plan, Sommet Kananaskis Summit, Canada, 2002, at para 1 and 'The Gleneagles Communiqué on Africa', 12 *Law and Business Review of the Americas* 245 (2006).

<sup>186</sup> See United Nations, Millennium Development Goals Report 44-48 (New York: United Nations, 2008) and United Nations Economic and Social Council, Economic Commission for Africa & African Union Commission, Assessing Progress in Africa Towards the Millennium Development Goals Report 2008, UN Doc. E/ECA/COE/27/10AU/CAMEF/EXP/10(III), 6 March 2008, at pp 18-19.

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